

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATHENA ART FINANCE CORP.,

Plaintiff,

-against-

that

CERTAIN ARTWORK BY JEAN-MICHEL
BASQUIAT ENTITLED HUMIDITY, 1982,
In Rem,

Defendant,

SATFINANCE INVESTMENT LIMITED and
DELAHUNTY LIMITED d/b/a DELAHUNTY
FINE ART,

Interested Parties.

Case No. 20-cv-4669(GBD)(DCF)

Hon. George B. Daniels

Hon. Debra Freeman

SATFINANCE INVESTMENT LIMITED,

Intervenor-Plaintiff,

-against-

ATHENA ART FINANCE CORP. and
that CERTAIN ARTWORK BY JEAN-MICHEL
BASQUIAT ENTITLED HUMIDITY, 1982,
In Rem,

Intervenor-Defendants.

**LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
UNDER THE HAGUE CONVENTION ON THE TAKING OF EVIDENCE
ABROAD IN CIVIL MATTERS TO OBTAIN EVIDENCE FROM
HSBC BANK PLC, HSBC UK BANK PLC AND SANTANDER UK PLC**

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To: Central Authority of the Requested State:

The Senior Master of the Queen's Bench Division
Foreign Process Section
Room E16
Royal Courts of Justice
Strand
London WC2A 2LL
United Kingdom

From: Sender/Requesting Judicial Authority:

Honorable Debra Freeman
United States Magistrate Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007
(T): (212) 805-4650

In conformity with Articles 1 and 3 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, the United States District Court for the Southern District of New York respectfully requests an Order requiring the production of documents by HSBC Bank PLC and HSBC UK Bank PLC (together "HSBC") and Santander UK PLC ("Santander") (collectively, the "Banks"), each of which is located within the jurisdiction of the United Kingdom, and whose documents are intended to be used at a civil trial in the above-captioned civil proceeding currently pending before this Court (the "U.S. Action").

This Request is made for the purposes of the civil trial in the U.S. Action, which is presently pending before the Southern District of New York and is necessary and in the interest of justice and for the purpose of a full and fair determination at trial of matters in issue amongst the parties in the U.S. Action.

The U.S. Action is a civil proceeding in which Plaintiff Athena Art Finance Corp. ("Athena"), Interested Party and Intervenor-Plaintiff Satfinance Investment Limited ("SIL"), and

Interested Party Delahunty Limited d/b/a Delahunty Fine Art (“Delahunty”), each make claims of title or partial title to the *In Rem* Defendant, a painting by Jean-Michel Basquiat (the “Painting”) by virtue of their dealings with Inigo Philbrick, and his companies, Inigo Philbrick Limited (“IPL”) (incorporated in England), and 18 Boxwood Green Limited (“Boxwood”) (incorporated in Jersey).

1. Persons to Whom the Executed Request Is to be Returned:

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Attorneys for Intervenor-Plaintiff Satfinance Investment Limited

2. Full Title of Action:

Athena Art Finance Corp. v. that Certain Artwork by Jean-Michel Basquiat Entitled Humidity, 1982, In Rem, Southern District of New York, Case Number 1:20-cv-4669-GBD-DCF

3. Identity and Address of the Parties Who Are to Provide Evidence:

- a.** HSBC Bank PLC
8 Canada Square
London, E14 5HQ
United Kingdom
- b.** HSBC UK Bank PLC
1 Centenary Square
Birmingham, B1 1HQ
United Kingdom
- c.** Santander UK PLC
2 Triton Square
Regent’s Place
London, NW1 3AN
United Kingdom

4. Parties to the U.S. Action and their Representatives:

a. Plaintiff Athena Art Finance Corp.:

Wendy J. Lindstrom, Esq.
Richard Lerner, Esq.
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b. Interested Party and Intervenor-Plaintiff Satfinance Investment Limited:

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c. Interested Party Delahunty Limited d/b/a Delahunty Fine Art:

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5. Nature of the Proceedings and Summary of the Facts:

The U.S. Action is a civil proceeding arising out of a property-ownership dispute involving the Painting. SIL alleges that it acquired full title to the Painting in August 2016 for \$12.2 million, and has never sold, transferred, or otherwise disposed of any part of its ownership interest. In connection with this 2016 acquisition, SIL was fraudulently induced into an agreement with IPL—an entity owned and controlled by Inigo Philbrick—to market and sell the Painting. Under that

agreement, SIL acquired “full title” to the Painting, and IPL would receive a percentage of any profits commensurate with its financial contribution.

Not long after taking physical possession of the Painting under the agreement with SIL, Philbrick purported to transfer ownership to a Jersey entity he controlled, Boxwood; and then he purported to pledge the Painting as collateral on a multimillion-dollar art-backed loan (the “Loan”) from Athena.

As a direct result of Philbrick’s conduct involving this Painting—and similar conduct involving other artworks—Philbrick has been indicted on federal charges of wire fraud and aggravated identity theft. *See United States v. Philbrick*, Case No. 20-cr-351(SHS) (S.D.N.Y.).

Athena agreed to originate the Loan and then took physical possession of the Painting. Upon learning of the Painting’s whereabouts, SIL commenced proceedings in England in November 2019, where IPL was incorporated and where the thief was believed to be domiciled at the time.

Following the dismissal of SIL’s claims against Athena in the English action on jurisdictional grounds, Athena commenced the U.S. Action seeking a declaratory judgment resolving the competing title claims.

SIL alleges that, because under applicable law the thief could not transfer good title to the stolen Painting, SIL was the “full title” holder before Athena claims to have acquired a security interest in the Painting from the thief. Athena, by contrast, argues that it acquired title to the Painting by virtue of the Loan, Boxwood’s default under the Loan, and its judgment against Boxwood, Philbrick, and IPL of \$14,306,800.46. *See Athena Art Finance Corp. v. 18 Boxwood Green Limited, et al.*, Index No. 657322/2019 (Sup. Ct. N.Y. Co.). Delahunty also alleges that it acquired a 12.5% interest in the Painting by virtue of an agreement with IPL and the transfer of \$2.53 million to IPL in November 2016.

6. Evidence to be Obtained and Purpose:

a. Documents to be Obtained from HSBC:

All bank statements, together with copies of all payment instructions, checks and cancelled checks, from January 1, 2016, to October 20, 2019, concerning accounts held by Inigo Philbrick Ltd., Onigo Philbrick Ltd. and Inigo August Philbrick, including, but not limited to, the following:

Account No. 400515-74715599, held by Inigo Philbrick Ltd.

Account No. 400969-74715599, held by Onigo Philbrick Ltd.

Account No. 400516-72415119, held by Onigo Philbrick Ltd.

Account No. 400707-51648705, held by Inigo August Philbrick

Account No. 400707-51648713, held by Inigo August Philbrick

Account No. 400707-82189984, held by Inigo August Philbrick

Account No. 404760-00620637, held by Inigo August Philbrick

Account No. 404786-71865085, held by Inigo August Philbrick

b. Documents to be Obtained from Santander:

All bank statements, together with copies of all payment instructions, checks and cancelled checks, from January 1, 2016, to October 20, 2019, concerning accounts held by Inigo Philbrick Ltd., Onigo Philbrick Ltd. and Inigo August Philbrick, including, but not limited to, Account No. 00053379 (Sort Code 09 07 15), held by Inigo Philbrick Ltd.

c. Purpose of the Evidence Sought:

The documents are sought for use at a trial in the U.S. Action and will help clarify issues related to the claims and defenses of each of the parties related to their corresponding interests in the Painting, including: (i) how IPL paid to acquire the Painting in 2016; (ii) whether Philbrick accurately stated his assets and the assets of IPL to Athena at the time of the Loan, including the relationship between IPL and an account held by Onigo Philbrick Ltd.; (iii) how IPL and/or

Philbrick used the funds transferred to IPL by Delahunty for a partial interest in the Painting in November 2016; (iv) what consideration IPL received from Boxwood for the alleged transfer of title of the Painting; and (v) how Philbrick used the proceeds of the Loan.

The Court requests that the documents are certified by a responsible officer of HSBC and Santander (as appropriate) for their admissibility in the U.S. Action.

Dated: New York, New York
September __, 2021

SO ORDERED:

Honorable Debra Freeman
United States Magistrate Judge